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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 PATRICK JACKSON,	}	Case No. EDCV 15-02565-DMG (KES)
12 Plaintiff,		
13 v.		ORDER DISMISSING COMPLAINT
14 DALE E. STRINGER, et al.,		WITH LEAVE TO AMEND
15 Defendants.		
16		

17  
18 On December 16, 2015, pro se Plaintiff Patrick Jackson ("Plaintiff"), a  
19 federal prisoner at U.S.P. Allenwood, filed a civil rights complaint  
20 accompanied by an application to proceed In Forma Pauperis ("IFP"). (Dkt. 1  
21 "Complaint;" Dkt. 2.) His IFP application was denied without prejudice due  
22 to his failure to provide a copy of his prison trust account statement. (Dkt. 4.)

23 On February 22, 2016, Plaintiff submitted a copy of his prison trust  
24 account statement showing that his six-month average daily balance was  
25 \$315.97. (Dkt. 6.) The Court granted his IFP application, but ordered him to  
26 pay an initial filing fee of \$20. (Dkt. 7.)

27 On March 14, 2016, the Court received a letter brief from Plaintiff  
28 advising that he was currently unable to pay the initial filing fee, but requesting

1 that the Court nevertheless move forward with screening his Complaint. (Dkt.  
2 8.) Accordingly, the Court reviewed the Complaint and identified the pleading  
3 deficiencies described below.

#### 4 I.

#### 5 SUMMARY OF PLAINTIFF'S ALLEGATIONS

6 Plaintiff alleges that in February 2015, he had a cellmate named Shelton  
7 Johnson. (Complaint at 12.<sup>1</sup>) Plaintiff knew that Johnson was a “prison  
8 snitch” and had been stealing from Plaintiff’s locker. (Id.)

9 On February 17, 2015, a correctional officer wrote an “Incident Report”  
10 arising out of the cell shared by Plaintiff and Johnson. (Id. at 18.) The officer  
11 found a weapon (a sharpened piece of plastic) in the common area hidden in a  
12 box. (Id.) When asked to comment, Plaintiff claimed it was Johnson’s knife.  
13 (Id.) Plaintiff was charged with a violation of Bureau of Prison (“BOP”)  
14 regulations. (Id. at 19 [acknowledgment of rights dated 2/23/15].)

15 A few days later, Plaintiff got into a fight with Johnson and suffered a  
16 broken jaw bone on the left side of his face. (Id. at 12.) On February 26, 2015,  
17 Plaintiff was transported to the hospital for treatment. (Id. at 11.) Plaintiff  
18 alleges that the oral surgeons, Defendants Dr. Stringer and Dr. Partner, “failed  
19 to sanitize” the hardware they inserted to repair his broken jaw, resulting in an  
20 infection, dental abscess, additional surgeries, nerve damage, deformation of  
21 the left side of his face, pain and suffering. (Id. at 1.) Plaintiff alleges that  
22 these doctors “are employed privately by Loma Linda University Medical  
23 Center.” (Id. at 2.)

24 In addition to suing the two doctors, Plaintiff is also suing three BOP  
25 staff members assigned to his unit: Defendants Counselor Melendez, Unit  
26

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27 <sup>1</sup> All page references are to the CM/ECF pagination.  
28

1 Manager Sylvester and Case Manager Warren (collectively, the “BOP  
2 Defendants”). According to Plaintiff, the BOP Defendants knew that the  
3 situation between Plaintiff and Johnson “could blow at any time,” but failed to  
4 “take preventative action.” (*Id.* at 12-13.)

5 On these facts, Plaintiff alleges claims under Bivens v. Six Unknown  
6 Named Agents, 403 U.S. 388 (1971), 42 U.S.C. § 1983 and 42 U.S.C. § 1985.  
7 (*Id.* at 10.) Plaintiff sues all Defendants in both their individual and official  
8 capacities. (*Id.*)

## 9 II.

### 10 PLEADING DEFICIENCIES

#### 11 A. Plaintiff’s Official Capacity Claims Against the BOP Defendants Fail.

12 A lawsuit against federal public employees in their official capacity is  
13 equivalent to a lawsuit against the federal government. Due to sovereign  
14 immunity, Bivens claims or Section 1985 claims are not available against  
15 federal agents in their official capacity. Consejo De Desarrollo Economico De  
16 Mexicali, A.C. v. United States, 482 F.3d 1157, 1173 (9th Cir. 2007); Jachetta  
17 v. United States, 653 F.3d 898, 908 (9th Cir. 2011).

#### 18 B. Bivens Claims.

##### 19 1. Plaintiff’s Individual Capacity Bivens Claims Against the BOP 20 Defendants Fail as Drafted, But May Be Amended.

21 A prison official’s “deliberate indifference” to a substantial risk of serious  
22 harm to an inmate violates the Eighth Amendment. Farmer v. Brennan, 511  
23 U.S. 825, 828 (1994). A prison official cannot be found liable under the Eighth  
24 Amendment, however, “unless the official knows of and disregards an  
25 excessive risk to inmate health or safety; the official must both be aware of  
26 facts from which the inference could be drawn that a substantial risk of serious  
27 harm exists, and he must also draw the inference.” *Id.* at 837.

28 Here, while Plaintiff alleges in conclusory terms that the BOP

Defendants knew about tension between Johnson and Plaintiff, Plaintiff does not allege sufficient facts to show knowledge of a substantial risk of harm to Plaintiff (e.g., Did Plaintiff submit complaints or talk to the Defendants about Johnson? If so, what did he tell them and when?). Plaintiff also does not allege facts sufficient to show that the risk of an altercation between him and his cellmate was one that should have been viewed as a “substantial risk of serious harm” to Plaintiff (e.g., How long had they been cellmates? Had there been violence between them before? How did the fight on February 26, 2015 start?).

**2. Plaintiff Cannot State a Bivens Claims Against Dr. Stringer or Dr. Partner.**

Federal inmates have no Bivens claims against employees of private entities, even if the BOP contracts with those entities for inmate care. See Karboau v. Clark, 577 Fed. App’x 678, 679 (9th Cir. 2014), citing Minneeci v. Pollard, -- U.S. --, 132 S. Ct. 617, 626 (2012) (federal inmate has no Bivens claims against private employees working at a privately operated federal prison for denial of medical care or similar conduct). Plaintiff’s remedy against these doctors would be to pursue an action in state court for medical malpractice or other torts.

**C. 1983 Claims.**

Because Plaintiff alleges that all of the Defendants were private or federal actors (and not state actors), all of Plaintiff’s section 1983 claims fail as a matter of law.

**D. 1985 Claims.**

Section 1985 proscribes conspiracies to interfere with certain civil rights. A claim under this section must allege facts to support the allegation that defendants conspired together. A mere allegation of conspiracy without factual specificity is insufficient. Karim-Panahi v. Los Angeles Police Dep’t,

1 839 F.2d 621, 626 (9th Cir. 1988). In addition, no cause of action exists unless  
 2 the conspirators were motivated by discriminatory animus. Gillespie v.  
 3 Civiletti, 629 F.2d 637, 641 (9th Cir. 1980).

4 Here, Plaintiff fails to plead facts concerning the nature of the alleged  
 5 conspiracy or its members. Plaintiff fails to allege that he is a member of any  
 6 protected class and that Defendants' alleged wrongdoing was motivated by  
 7 their desire to discriminate against that class. His section 1985 claims are  
 8 therefore dismissed with leave to amend.

### 9 III.

#### 10 LEAVE TO AMEND

11 If Plaintiff still desires to pursue this action, he is **ORDERED** to file a  
 12 First Amended Complaint within thirty (30) days of the date of this Order  
 13 remedying the deficiencies discussed above.

14 If Plaintiff chooses to file a First Amended Complaint, it should bear the  
 15 docket number assigned in this case; be labeled "First Amended Complaint";  
 16 and be complete in and of itself without reference to the original Complaint or  
 17 any other pleading, attachment or document.

18 The Clerk is directed to send Plaintiff a blank Central District civil rights  
 19 complaint form, which Plaintiff is encouraged to utilize.

20 **Plaintiff is admonished that, if he fails to timely file a First Amended**  
 21 **Complaint, the Court will recommend that this action be dismissed with**  
 22 **prejudice on the grounds set forth above and for failure to diligently**  
 23 **prosecute.**

24  
 25 Dated: March 17, 2016

*Karen E. Scott*

26  
 27 KAREN E. SCOTT  
 28 United States Magistrate Judge

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 FULL NAME

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 COMMITTED NAME (if different)

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 FULL ADDRESS INCLUDING NAME OF INSTITUTION

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 PRISON NUMBER (if applicable)

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

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CASE NUMBER

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*To be supplied by the Clerk*

v.                      PLAINTIFF,

DEFENDANT(S).

**CIVIL RIGHTS COMPLAINT****PURSUANT TO** *(Check one)*☐ 42 U.S.C. § 1983☐ Bivens v. Six Unknown Agents 403 U.S. 388 (1971)**A. PREVIOUS LAWSUITS**

1. Have you brought any other lawsuits in a federal court while a prisoner: ☐ Yes    ☐ No
2. If your answer to "1." is yes, how many? \_\_\_\_\_

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

- a. Parties to this previous lawsuit:

Plaintiff \_\_\_\_\_

Defendants \_\_\_\_\_

- b. Court \_\_\_\_\_

- c. Docket or case number \_\_\_\_\_

- d. Name of judge to whom case was assigned \_\_\_\_\_

- e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) \_\_\_\_\_

- f. Issues raised: \_\_\_\_\_

- g. Approximate date of filing lawsuit: \_\_\_\_\_

- h. Approximate date of disposition \_\_\_\_\_

## B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? ☐ Yes ☐ No

2. Have you filed a grievance concerning the facts relating to your current complaint? ☐ Yes ☐ No

If your answer is no, explain why not \_\_\_\_\_

3. Is the grievance procedure completed? ☐ Yes ☐ No

If your answer is no, explain why not \_\_\_\_\_

4. Please attach copies of papers related to the grievance procedure.

## C. JURISDICTION

This complaint alleges that the civil rights of plaintiff \_\_\_\_\_  
(print plaintiff's name)

who presently resides at \_\_\_\_\_  
(mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

\_\_\_\_\_  
(institution/city where violation occurred)

on (date or dates) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(Claim I) (Claim II) (Claim III)

**NOTE:** You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

\_\_\_\_\_  
\_\_\_\_\_

2. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

\_\_\_\_\_  
\_\_\_\_\_

3. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

\_\_\_\_\_  
\_\_\_\_\_



4. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

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5. Defendant \_\_\_\_\_ resides or works at  
(full name of first defendant)  
\_\_\_\_\_  
(full address of first defendant)  
\_\_\_\_\_  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

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